In the Supreme Court of the United States

OCTOBER TERM, 1927

No. 42

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS,
Petitioner,

vs.

COLLECTOR OF INTERNAL REVENUE,
Respondent.

BRIEF FOR RESPONDENT

ON WRIT OF FOREIGN INSURANCE.

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TAX ON FOREIGN INSURANCE

OPINIONS BELOW.

The opinion of the Court of First Instance of Manila, October 15, 1924 (HARVEY, J.), is not officially reported. It appears on pages 11 to 27 of the printed transcript of the record.

The opinion of the Supreme Court of the Philippine Islands, September 26, 1925, is not yet officially reported. It appears on pages 29 to 43 of the record. The dissenting opinion of Justices Johnson and Street is on pages 43 to 45.

JURISDICTION.

This court, May 3, 1926, granted the writ of certiorari to the petitioner, Compañía General de Tabacos de Filipinas, plaintiff in the original action in the Court of First Instance and appellant in the Insular Supreme Court (271 U. S. 655).

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THE QUESTIONS.

1. Is this a tax, of a kind within the power of the Philippine Government to lay and collect;—that is to say, was it within the power of the Philippine Government to tax the plaintiff, in the Philippine Islands, on the amount of the insurance premiums paid in London and Paris?

2. Is this tax violative of the first paragraph of Section 3 of the Jones Law, as denying to the plaintiff liberty or property without due process of law, or as denying to it equal protection of the laws, because unduly discriminative against insuring with foreign insurance companies?

3. Is this tax violative of the provision of the Jones Law that "The rule of taxation in said islands shall be uniform"?

STATUTES INVOLVED.

The statutes involved are printed in the "Appendix" to plaintiff-petitioner's brief in support of its petition for certiorari. The essential provisions are:

PHILIPPINE STATUTES.

Act No. 2339.—Sec. 79.—"*Tax on insurance premiums.*—There shall be collected from every person, company or corporation (except purely cooperative companies or associations) doing insurance business of any sort in the Philippine Islands a tax of one per cent of the total premiums collected during each calendar year, whether paid in money, notes, credits, or any substitute for money, * * *."

Act No. 2427.—Sec. 57.—"An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss."

Act No. 2427.—Sec. 59.—"A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements."

Act No. 2427.—Sec. 192, as amended by Act No. 2430, Dec. 15, 1914.—"It shall be unlawful for any person, company or corporation in the Philippine Islands either to procure, receive, or forward applications for insurance in or to issue or to deliver or accept policies of or for any company or companies not having been legally authorized to transact business in the Philippine Islands, as provided in this chapter; * * * *: *And provided further*, That the prohibitions of this section shall not affect the right of

an owner of property to apply for and obtain for himself policies in foreign companies in cases where said owner does not make use of the services of any agent, company or corporation, residing or doing business in the Philippine Islands. In all cases where owners of property obtain insurance directly with foreign companies, it shall be the duty of said owners to report to the Insurance Commissioner and to the Collector of Internal Revenue each case where insurance has been so effected, and shall pay the tax of one per centum on premiums paid, in the manner required by law of insurance companies, and shall be subject to the same penalties for failure to do so."

UNITED STATES STATUTES.

Organic Act of the Philippine Islands, "Jones Law," Act of August 29, 1916, ch. 416, 39 Stat. 545.—Sec. 3, Declaration of rights.—

"Sec. 3. That no law shall be enacted in said Islands which shall deprive any person of life, liberty or property without due process of law, or deny to any person therein the equal protection of the law" (39 Stat. 546).

"That the rule of taxation in said islands shall be uniform" (39 Stat. 547).

STATEMENT OF THE CASE.

The case is stated in the stipulated "Agreed Statement of Facts" (R. 8-10) with the supplemental "Stipulation" (R. 11) submitted to the Court of First Instance. This "Agreed Statement of Facts" is copied into the opinion of the Court of First Instance (R. 12–15), and again into the opinion of the Insular Supreme Court (R. 30–33).

The gist of it is that the plaintiff-petitioner is a Spanish corporation licensed to do business in the Philippines and maintaining "its principal office in the said islands" in Manila; that through its head office in Barcelona, Spain, it placed "open and running policies" of fire insurance with the Guardian Assurance Company of London, England, on which it paid premiums in London, and of marine insurance with Le Comité des Assurances Maritimes de Paris, of Paris, France, on which it paid premiums in Paris, all "without the use of the services or intervention of any agent, company, corporation or other representative of the aforesaid two foreign insurance companies, residing or doing business in the Philippine Islands,"

and that the insurance companies would have paid the amounts of any losses "to plaintiff's head office in London, and/or Paris, as the case might be, for plaintiff's account"; that during the year 1922 plaintiff purchased and deposited in its warehouses in the Philippine Islands certain merchandise, and from time to time by cable notified its head office in Barcelona, Spain, of the value thereof, and that the head office in Barcelona, "thereupon insured said goods, wares and merchandise, for and on behalf of plaintiff, against fire," under such open and running policies of insurance carried with the Guardian Assurance Company of London, and paid the premiums thereon in London; that, subsequently to the purchase of such goods, plaintiff "did, from time to time during the year 1922, ship said goods abroad, for sale, and did, by cable, at the time of making said shipments, notify its head office in Barcelona, Spain, of the value of said shipments," and that plaintiff's head office in Barcelona "thereupon insured said shipments of goods, for and on behalf of plaintiff, against marine risks," under such open and running policies of insurance carried with Le Comité des Assurances Maritimes de Paris, and paid the premiums thereon in Paris; that both the Guardian Assurance Company of London and Le Comité des Assurances Maritimes de Paris are foreign corporations, the former being licensed to do business in the Philippine Islands and having an agent or agents in the Islands, but the latter not licensed to do business in the Philippine Islands and having no agent therein. That on or about June 25, 1923, defendent-respondent, Insular Collector of Internal Revenue, acting under Section 192 of Act No. 2427 of the Philippine Legislature, as amended by Act No. 2430, levied against plaintiff in the Philippine Islands a tax of one per cent. of the amount of the premiums so paid by it to the Guardian Assurance Company in London and to Le Comité des Assurances Maritimes de Paris in Paris; that plaintiff paid the tax under protest, and thereupon filed this action for the refund thereof.

Plaintiff's contentions are, as stated in its assignment of errors in the Insular Supreme Court (R. 28–29 and 33–34), and in its brief here in support of its petition for certiorari (Petitioner's brief, pp. 17–18), that the Insular Courts erred:—

(1) In not declaring Section 192 of Philippine Act No. 2427, as amended by Act No. 2430, "void, unconstitutional and violative of Section 3 of the Jones Law—Act of Congress of August 29, 1916—which provides that the rule of taxation in the Philippine Islands shall be uniform"; (2) in not declaring such Section 192 of Act No. 2427, as amended by Act No. 2430, void as violative of the provision of Section 3 of the Jones Law that "no law shall be enacted in the Philippine Islands which shall deprive any person of life, liberty or property without due process of law"; and (3) "in not holding that the cables sent by plaintiff to its head office in Barcelona (advising Barcelona of the value of goods on deposit or being shipped by plaintiff from these Islands) were collateral and subsequent to the creation of the principal contracts of foreign insurance." And plaintiff-petitioner further says in its "Argument" in its brief here (Petitioner's brief, "Argument," p. 18) that

> "The underlying question at the very heart of this controversy is whether the exaction imposed upon the owners of insurance obtained abroad is a tax at all."

RESPONDENT'S POSITION.

Respondent's position is that the tax is valid; and, therefore, that the judgment of the Supreme Court of the Philippine Islands should be affirmed; because:

1. This tax is of a kind within the taxing power of the local government,—the Government of the Philippine Islands.

2. It is not unduly discriminatory against persons insuring with foreign insurance companies, since it levies against them only the same tax of one per cent. of the premiums paid which is levied upon premiums paid on insurance effected in the Philippine Islands. It is immaterial that the insurer, if insuring directly in a foreign company, pays the tax directly to the government, whereas he pays it through the medium of the insurance agent if the insurance is effected in the Philippine Islands,—the amount being precisely the same, viz. one per cent. of the premiums paid, in either case.

3. This tax does not violate the rule of uniformity in taxation,—that is to say, the requirement of the Jones Law that the rule of taxation in the islands shall be uniform.

ARGUMENT

POINT I.

This tax is of a kind within the taxing power of the local government,—the Government of the Philippine Islands.

This is believed to be settled by the recent decision of this court in the Palmetto Insurance Company case.

> *Palmetto Ins. Co.* vs. *Conn*, 272 U.S. 295, 304–305 (HOLMES, J., Oct. 25, 1926).

In that case the facts, as stated in the opinion of this court, were:

> "The plaintiff made a contract of insurance in Michigan with the Chrysler Sales Corporation, a Michigan Corporation which sells all the automobiles made by the Chrysler Corporation. This contract purported to insure purchasers of Chrysler cars against fire and theft, and to become automatically effective from the date on which the purchaser took delivery or a bill of sale of the car; the Chrysler Company to send a monthly report to the plaintiff for all cars for which insurance was thus provided and to pay premiums accordingly at Detroit. If anyone bought a car he got the insurance whether he wished it or not as part of his bargain, and a certificate was sent to him by the plaintiff. The question is whether this transaction brought the plaintiff within the taxing power of Ohio." (272 U. S., *supra*, at p. 304.)

Upon these facts this court held that upon a purchase of a Chrysler car by a purchaser in Ohio,—or in Wisconsin or in Maine,—the insurance thereupon coming into effect in the purchaser's favor under the Michigan contract between the Chrysler Corporation and the insurance company constituted insurance effected within the State where the car was purchased and consequently subject to the laws of that State; saying:

> "Whatever technical form may be given to the reasoning, the substance is that by acts done in Ohio the purchaser obtains for himself the advantage of insurance that before that moment did not exist. It does not matter whether his getting it was a large or an inconspicuous feature of his bargain. It was part of it in any event, and

we cannot doubt that the lower court was right in holding that in such circumstances the State could insist upon its right to tax." (272 U.S., *supra*, at p. 305.)

The facts in the case here at bar are strictly analogous. Here, as in the *Palmetto* case, the general open and running contracts of insurance were made outside of the jurisdiction of the Government levying the tax but were brought into effect afterwards as to particular property situated within the jurisdiction by the acts of persons resident within the jurisdiction and subject to the local government's (the Philippine Government's) power to tax,—viz. by the acts of the plaintiff's Philippine branch office in purchasing and storing the tobacco and advising the London insurance company (through plaintiff's head office in Barcelona) of that fact, thereby bringing the fire insurance into effect; and in thereafter loading it on to vessels for water shipment, and advising the Paris company (through plaintiff's Barcelona office), thereby bringing the maritime insurance into effect. If there be any difference whatever, in principle, between this case and the *Palmetto* case, then this presents a stronger case in favor of the local government's power to tax than did the *Palmetto* case; since, here, the persons subject to the local jurisdiction in the Philippine Islands who performed the specific acts of purchase and storage and shipment of the property and the cabling of advices of those facts, to bring the fire and marine insurance policies respectively into effect as to the particular property, were themselves a part of the plaintiff corporation, viz., its branch office in Manila, whose acts were as much those of the plaintiff itself as were the acts of its head office in Barcelona in making the original insurance contracts and paying the premiums thereon. If, on the other hand, plaintiff's branch office in Manila is to be treated (as seems to be the idea underlying petitioner's argument here) as a separate identity from the head office in Barcelona, then this case becomes exactly the same in principle,—on all fours,—with the *Palmetto* case where the acts of third persons within the local jurisdiction (viz., in the case at bar, of plaintiff's local office in Manila), bringing the insurance into effect to cover specific property located within the jurisdiction, were held so to effect the

insurance within that jurisdiction "that in such circumstances the State" (the Philippine Government) "could insist upon its right to tax."

POINT II.

This tax is not unduly discriminatory against persons insuring with foreign insurance companies, since it levies against them only the same tax of one per cent. of the premiums paid which is levied upon premiums paid on insurance effected in the Philippine Islands.

It is immaterial that the insurer, if insuring directly in a foreign company, pays the tax directly to the Government; whereas he pays it through the medium of the insurance agent if the insurance is effected in the Philippine Islands,—the amount being precisely the same, viz. one per cent. of the premiums paid, in either case.

If the insurance is effected in the Philippine Islands, or through any person, company or corporation (except purely cooperative companies or associations) doing insurance business of any sort in those Islands, then a tax of one per cent. of the total premiums collected during each calendar year is levied, payable by the insurance company or insurance agent—Sec. 79, Philippine Act No. 2339, *ante*, p. 2, "Statutes Involved," and "Appendix," p. 1, to Petitioner's Brief.

If the insurer chooses (as the plaintiff in the case at bar) to obtain his insurance directly from a foreign company without making use of the services of any agent or corporation residing or doing business in the Philippine Islands, then he himself pays the tax at precisely the same rate of one per centum on the premiums paid.

> Sec. 192, Act No. 2427, as amended by Act No. 2430, Dec. 15, 1914, *ante*, pp. 2–3; and "Appendix" to Petitioner's brief, pp. II–IV.

A. *The cases relied upon by petitioner* (*Allgeyer* v. *Louisiana*, 165 U. S. 578; *St. Louis Cotton Compress Co.* v. *Arkansas*, 260 U. S. 346; *Re Page*, 60 Kansas, 842, 58 Pac. 478, 47 L. R. A., 68) are not to the contrary; and are not here in point. They *are all cases of actual, serious, intended discrimination* (or prohibition) *against insuring in foreign companies.*

B. For example, the *Allgeyer* case involved a Louisiana statute absolutely prohibiting such insurance and attempting to make it a criminal offense. (*Allgeyer* v. *Louisiana, supra,* 165 U. S. 578, 579, 589–593; Act No. 66, Acts of Louisiana, for the year 1894). Whereas, on the contrary, the Philippine statute here in question (Sec. 192, Philippine Act No. 2427, as amended by Act No. 2430, Dec. 15, 1914, *supra*) by its final *proviso* (*ante*, pp. 2–3), under which this tax was levied, expressly recognizes the "right of an owner of property to apply for and obtain for himself policies in foreign companies";—only requiring him to pay the same one per cent. tax on the premiums that he would pay through the insurance agent if the insurance were effected in the Philippine Islands.

In the *Allgeyer* case this court expressly said:

> "but we do not intend to hold that in no such case can the State exercise its police power. When and how far such power may be legitimately exercised with regard to these subjects must be left for determination to each case as it arises.
>
> "* * * This does not interfere in any way with the acknowledged right of the State to enact such legislation in the legitimate exercise of its police *or other powers* as to it may seem proper. In the exercise of such right, however, care must be taken not to infringe upon those other rights of the citizen which are protected by the Federal Constitution." (*italics ours.*)

Allgeyer v. *Louisiana, supra,* 165 U. S. 578, 590, 591.

Among such "other powers" is the power to tax.

There is nothing in the *Allgeyer* case inhibiting or limiting the power of the State to tax such insurance contracts as property (without discrimination against them because of their foreign character) in the same way that it taxes domestic insurance contracts. Like domestic contracts, they are property, and are subject to the local government's inherent power to tax.

C. Petitioner's other cases (the *St. Louis Compress Co.* case, and the *Page* case in the Kansas Supreme Court, *supra*) are both cases of deliberate legislative attempts at indirect prohibition of foreign insurance by levying highly discriminatory taxes against it.

In the Kansas case (*Re Page, supra*) a ten per cent. tax was attempted to be levied against such insurance; whereas no tax whatever was levied upon insurance effected within the State, either against the insurer, the insurance agent, or the insured (Kansas Laws of 1899, Ch. 249). The Supreme Court of Kansas, in holding the statute invalid and the tax illegal, said:

> "The lack of uniformity is manifest in another way: One taxpayer has a policy written in the state by a company with authority, upon which no tax is imposed, while his neighbor has one written by an unlicensed company at Indianapolis, or other place outside of the state, which is subject to taxation. Taxes are uniform and equal when imposed upon all property of the same character within the taxing district, and yet here the insured pays a 10 per cent. tax upon a policy written outside of the state, while his neighbor pays nothing upon a policy of equal value, and affording the same protection, because it is written within the state. * * * * This is an invidious discrimination, purposely made, and is a distinct departure from the constitutional rule of uniformity."
>
> *Re Page, supra*, 60 Kans. 842; 58 Pac. 478, 480; 47 L. R. A. 68, 70.

And in the *St. Louis Cotton Compress Co.* case, the Arkansas statute condemned by this court sought to levy a five per cent. tax on such foreign insurance; which, as this court noted in its opinion in that case, was "three per cent. more than is charged for insuring in authorized companies" within the State. In that case this court, following the *Allgeyer* case, said:

> "The Arkansas tax manifests no less plainly than the Louisiana fine a purpose to discourage insuring in companies that do not pay tribute to the State."
>
> *St. Louis Compress Co.* v. *Arkansas, supra*, 260 U. S. 346, 347, 348–349 (HOLMES, J., Dec. 4, 1922).

D. No such purpose is manifested by this Philippine statute. There is here no discrimination against foreign insurance. As was well said by the Insular Supreme Court in its opinion in this case (R. 37–38, 40, 42):—

> "As to the law here in question, we have this situation. The Government receives 1% of all premiums collected on domestic insurance, which is paid by the insurance

companies, and where the insurance is made in a foreign company without the services of an agent by a person here on property here, the provision above quoted requires that the insured 'shall pay the tax of one per centum on premiums paid, in the manner required by law of insurance companies.' That it to say, in one case, the 1% tax is paid by the insurance company, and, in the other, it is paid by the insured. But, as a matter of fact, in both cases, it is paid by the insured. In actual practice, the amount of any tax paid on the premiums collected by the insurance company is added to, and becomes a part of, the premium itself and, in the final analysis, is paid by the insured. If, as a matter of fact, the 1% tax is collected on premiums on domestic insurance and is not collected on premiums paid on foreign insurance, you would then have an 'invidious discrimination' against domestic insurance." (R. 37–38.) * * * *

"To hold the law unconstitutional would in effect amount to a discrimination in favor of a foreign insurance company which is not authorized to do business in the Philippine Islands and against insurance companies that are authorized to do business here." (R. 40.) * * * *

"In legal effect there is no prohibition against a person doing business in the Philippine Islands insuring property here with an insurance company, which is not authorized to do business here. The Government says that you can insure your property in either a foreign or domestic insurance company, but if you insure it in a foreign insurance company, then you must pay the 1% tax which an insurance company authorized to do business in the Philippine Islands is required to pay to the Government, and the whole matter is left entirely to the discretion of the insured. That is not discrimination. Neither does it 'deprive any person of life, liberty, or property, without due process of law,' and, in actual practice, 'the rule of taxation is uniform,' and the law in question is alike as to any and all persons similarly situated. To hold otherwise would be to require a domestic insurance corporation to pay a tax of 1% on its premiums collected, and to permit a person having property here to insure it in a foreign corporation not authorized to do business in the Philippines, and to avoid payment of the 1% tax. The law in question was enacted to prevent the doing of that very thing." (R. 42.)

POINT III.

This tax does not violate the rule of uniformity in taxation,—that is to say, the requirement of the Jones Law that "the rule of taxation in said islands shall be uniform."

The only contention made in support of the claim of supposed lack of uniformity is that (petitioner's brief, pp. 26–28), whereas in case of insurance effected within the Philippine Islands the 1% tax is paid by the insurance agent, it must be paid by the owner in case he insures directly with the foreign company. But the tax is the same in either event. The circumstance that in the one case it is paid through the insurance agent, whereas in the other it is paid directly by the owner, does not affect the uniformity of the rule of taxation. Uniformity is not tantamount to universality, and does not prevent reasonable classification of the objects or methods of taxation.

It is believed to be the settled rule of this court that "uniformity" does not require absolute *equality* of taxation under all circumstances; is not tantamount to "universality"; and does not prevent reasonable classification of either the property or the persons to be taxed, or of the methods of collection of the taxes.

Louisiana v. *Pilsbury*, 105 U. S. 278, 296.
Bell's Gap R. Co. v. *Pennsylvania*, 134 U. S. 232, 237–238.
Home Ins. Co. v. *New York*, 134 U. S. 594, 606.
Pac. Exp. Co. v. *Seibert*, 142 U. S. 339, 350–352.
Giozza v. *Tiernan*, 148 U. S. 657, 662.
Watson v. *State Comptroller*, 254 U. S. 122, 124–125.
Stebbins v. *Riley*, 268 U. S. 137, 141–143.

> "This court has repeatedly laid down the doctrine that diversity of taxation, both with respect to the amount imposed and the various species of property selected either for bearing its burdens or for being exempt from them, is not inconsistent with a perfect uniformity and equality of taxation in the proper sense of those terms; and that a system which imposes the same tax upon every species of property, irrespective of its nature or condition or class, will be destructive of the principle of uniformity

and equality in taxation and of a just adaptation of property to its burdens."

Pac. Exp. Co. v. *Seibert, supra,* 142 U. S. 339, 351 (LAMAR, J.).

The provision in Section 3 of the Jones Law, the Organic Act of the Philippines, "That the rule of taxation in said islands shall be uniform" (39 Stat. 547) is only a paraphrase of the provision of the 14th Amendment securing to every person "the equal protection of the laws."

As applied to taxation, that constitutional provision has been said by this court to mean

> "That no greater burdens should be laid upon one than are laid upon others in the same calling and condition."
>
> *Bell's Gap R. Co.* v. *Pennsylvania, supra,* 134 U. S. 232, 238 (BRADLEY, J.), quoting with approval,
>
> *Barbier* v. *Connolly,* 113 U. S. 27, 31 (FIELD, J.).

Confer, also

> *Pac. Express Co.* v. *Seibert, supra,* 142 U. S. 339, 342–3, 350–51.

This tax lays no greater burden upon foreign than on domestic insurance.

CONCLUSION.

It is respectfully submitted that the judgment of the Supreme Court of the Philippine Islands, affirming that of the Court of First Instance of Manila, was right and should be affirmed.

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